

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL ACTION NO 16-MD-2738 (FLW) (LHG)

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----- : TRANSCRIPT OF
IN RE JOHNSON & JOHNSON : STATUS HEARING
POWDER PRODUCTS MARKETING, :
SALES PRACTICES AND : NOVEMBER 17, 2016
PRODUCTS LIABILITY
LITIGATION.

CLARKSON S. FISHER UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NJ 08608

B E F O R E: THE HONORABLE FREDA L. WOLFSON, USDJ
THE HONORABLE LOIS H. GOODMAN, USMJ

A P P E A R A N C E S:

ASHCRAFT & GEREL, ESQUIRES
BY: MICHELLE A. PARFITT, ESQUIRE (VIRGINIA)
-and-
BEASLEY, ALLEN, ESQUIRES
BY: P. LEIGH O'DELL, ESQUIRE (ALABAMA)
-and-
CHRISTOPHER M. PLACITELLA, ESQUIRE (NEW JERSEY)
-and-
BLOOD, HURST & O'REARDON, ESQUIRES (CALIFORNIA)
On Behalf of the Plaintiffs

DRINKER, BIDDLE & REATH, ESQUIRES
BY: SUSAN M. SHARKO, ESQUIRE (NEW JERSEY)
-and-
SHOOK, HARDY & BACON, ESQUIRES
BY: GENE M. WILLIAMS, ESQUIRE (TEXAS)
-and-
SKADDEN, ARPS, ESQUIRE
BY: JOHN H. BEISNER, ESQUIRE (WASHINGTON, D.C.)
On behalf of Defendant Johnson & Johnson

(The remaining appearances are on the docket.)

* * * * *

VINCENT RUSSONIELLO, CCR, CRR, RPR
OFFICIAL U.S. COURT REPORTER
(609) 588-9516

C E R T I F I C A T E

PURSUANT TO TITLE 28, U.S.C., SECTION 753, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.

S/Vincent Russoniello
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

1 (In open court.)

2 JUDGE WOLFSON: We've spent about the last
3 hour and a half to two hours hopefully going through
4 all of the items that were listed in the various
5 status letters that have been submitted to the Court.
6 That was all done here in the courtroom, but off the
7 record, and we've had substantial discussion at this
8 point before both myself and Judge Goodman.

9 So at this point I would simply like to
10 summarize some of the matters that we have decided
11 today. But there will be a case management order that
12 will be entered that I understand Ms. Sharko has
13 volunteered to draft in the first instance that will
14 incorporate the various agreements that we have
15 reached today.

16 If, as I go through this, I make a mistake or
17 someone thinks that's not what we decided, please
18 speak up, but give your name because obviously my
19 court reporter is not privy to who all of you are, so
20 that the record can be accurate.

21 To begin, I informed the parties that we will
22 not have multi plaintiff complaints here. The
23 complaints will have to be broken down into single
24 plaintiff complaints.

25 The one exception will be, I was asked that to

1 the extent there may have been remand motions that
2 were sought to be filed that would have the common
3 issue as to all plaintiffs in those multi plaintiff
4 complaints, that that remand motion be able to be
5 filed and decided first before new single plaintiff
6 complaints are filed.

7 I have indicated that that is fine. So we
8 will have that done first. Otherwise, however, the
9 complaints shall be divided.

10 Talking about the filing of complaints. The
11 question was raised as to whether there should be
12 going forward new complaints and they should be
13 directly filed in this court, and I have said yes,
14 they are to be directly filed here.

15 The parties will confer as to what issues may
16 arise therefrom, choice of law and other legal matters
17 based on the filing of direct complaints, and that the
18 parties will confer as to the ramifications of that.

19 With regard as well to the complaints, there
20 has been agreement reached today that there will be a
21 master complaint for the plaintiffs with as well short
22 form complaints to be filed, and that those short form
23 complaints will conform to discussion to be had with
24 defense counsel as well as to what needs to be
25 included and some protocol for what has to be included

1 in the short form complaints.

2 Consistent with that then, while there can be
3 a master answer filed, there will be short form
4 answers filed if there are specifically defenses being
5 raised as to particular plaintiff cases that are
6 different from the general defenses being raised.

7 I raised with the parties whether there was a
8 need at this point for a Special Master to be
9 appointed. The consensus seems to be that they are
10 very happy to have Judge Goodman resolve discovery
11 disputes and other pretrial matters.

12 If that becomes a burdensome task either
13 because of privilege law questions that become
14 burdensome or because you bother her too much, the
15 Court will at that point entertain appointment of a
16 Special Master, but at this point that will not be the
17 case.

18 Plaintiff fact sheets were discussed as well
19 and there was agreement that there would be plaintiff
20 fact sheets, and the parties will confer as to what
21 should be contained therein and that there will not be
22 need for initial disclosures.

23 The plaintiffs raised also the issue of
24 defendants making, though, some sort of disclosures or
25 fact sheets, and the defendants agreed that they would

1 confer with plaintiffs as to what they are looking at
2 categories of matters to be disclosed and reach
3 agreement on that as well.

4 With regard to appointment of lead plaintiffs'
5 counsel as well as any steering committee, first, I
6 will note as to the consumer protection class actions,
7 there has been only one application made essentially
8 by Mr. Blood and the indication is there is no one
9 that has objected to that.

10 It looks like it may be a foregone conclusion.
11 I have received his resume and other information, but
12 I have directed that he file a formal application to
13 be appointed by Monday, November 21.

14 With regard to the other lead plaintiffs with
15 regard to the personal injury actions, there had been
16 indication in the status letters that both Ms. Parfitt
17 and Ms. O'Dell were consensus selections for lead
18 plaintiff with Mr. Placitella being liaison counsel in
19 these matters and that there was no objection.

20 They have come forward today with a
21 recommended steering committee which I think would
22 number in lawyers altogether approximately 12
23 different lawyers or law firms. I had raised the
24 question as to why all of those were necessary because
25 I have not received any papers in regard to what the

1 division of responsibility would be or why all of
2 those different firms would be necessary.

3 Plaintiffs' counsel believe it is necessary
4 and that they will be filing an application by
5 November 21 to, one, support their application as
6 co-lead plaintiffs' counsel, as well as to approve
7 plaintiffs' liaison counsel, and to describe and
8 explain why the law firms or lawyers have been
9 suggested to be appointed as part of a steering
10 committee and the roles that they would play and why
11 that is necessary.

12 There were comments made by at least one of
13 the attorneys in the room who felt that others on the
14 committee may not adequately support their cases or
15 their position, or even if they may would want to be a
16 part of that committee and want to make their
17 applications as well.

18 So I have indicated that any applications to
19 either serve on the steering committee or to be
20 counsel should be made by the November 21 date and
21 responses or reactions to those various applications
22 then are to be filed by December 2nd.

23 So it's open submissions on November 21 and
24 responses and reactions December 2nd; and then I will
25 expeditiously go forward with appointing lead

1 plaintiffs' counsel as well as any additional counsel
2 to serve on their committee.

3 There has been agreement reached that both the
4 consumer protection cases and personal injury
5 plaintiff cases will share a database which has been
6 agreed to by the primary defendant J&J.

7 With regard to motions -- and there were a
8 number of pending motions prior to transfer to this
9 Court -- I've already mentioned the remand motions
10 that were made. I directed that there would be
11 briefing directly in this court.

12 Essentially, I am terminating or directing
13 that all motions that were filed in the other cases be
14 terminated with regard to the remand motion, that it
15 be briefed here and filed, and the indication has been
16 that could be done in two weeks, which puts us at
17 December 1 for filing of the remand motions.

18 I have also addressed the fact that there were
19 some personal jurisdiction motions that had been filed
20 principally I guess by PCPC and Imerys and that those
21 motions be terminated and that indeed they essentially
22 seem to be mooted out by the fact this matter has been
23 transferred to this jurisdiction as an MDL. So I do
24 not expect those to be refiled.

25 There were motions to dismiss that PCPC had

1 filed, as well as they indicated that they intend to
2 file additional ones, and I've directed that all of
3 those be terminated, that there be an omnibus motion
4 filed to dismiss by PCPC with included in there if
5 there are differences in law that they want to assert
6 based on various jurisdictions, that they cite the
7 appropriate law in that one brief and divide it up.
8 The same is true for Imerys if there are going to be
9 motions to dismiss.

10 MR. BEISNER: Your Honor, not to get into the
11 minutia, but just to make sure we don't have a problem
12 with timing issues, I just wanted to make sure that
13 it's the understanding of all parties that your order
14 that we refile these motions be without prejudice to
15 any deadlines that may be implicated by the
16 terminating of the earlier motion and filing of the
17 new one.

18 JUDGE WOLFSON: You mean the timing, for
19 instance, if you filed a motion to dismiss that it's
20 not affected by that.

21 MR. BEISNER: Correct. Or the motion to
22 remand within 30 days under the statute, we don't want
23 to be said we are out of time by refiling those.

24 I just want to make sure everybody is
25 understanding we are consistent with the deadlines in

1 doing the refiling.

2 JUDGE WOLFSON: That's fine.

3 MR. BEISNER: Thank you, your Honor.

4 JUDGE WOLFSON: If you want to, you may
5 include that in the order that you will submit so that
6 that is preserved.

7 Also, there had been a motion filed to dismiss
8 the Estrada case in the Eastern District of
9 California. There had been a suggestion that there
10 may need to be supplemental briefing on that to
11 address Third Circuit law.

12 I've directed instead that the motion be
13 terminated and that new briefing occur. The
14 indication there was that motion to dismiss can be
15 filed I think you said within 30 days. Is that
16 correct?

17 MR. WILLIAMS: Yes, your Honor.

18 JUDGE WOLFSON: And then a response by
19 Mr. Blood within 30 days thereafter, and a reply by
20 J&J two weeks thereafter.

21 I have agreed to hold what the defendants
22 called it, science day. I don't really care what the
23 term is, but that I've defined that we --

24 MS. PARFITT: Your Honor, maybe because it
25 will be a presentation of not just science but also

1 the history, we call it "case education." It's about
2 the case.

3 JUDGE WOLFSON: I just want to make sure, I
4 really am not talking about the case generally. It
5 really is going to limit itself to the science
6 involved.

7 MS. PARFITT: And the science is intricately
8 involved in the documents again. I think we've talked
9 about it. It may be semantics at this point.

10 THE COURT: Yes. I'm okay just calling it
11 science day.

12 MS. PARFITT: Okay.

13 JUDGE WOLFSON: I'll pretend I'm back in
14 elementary school.

15 MS. PARFITT: That's fine.

16 JUDGE WOLFSON: That's how simple I need it to
17 be.

18 MS. PARFITT: Very good. Thank you, your
19 Honor.

20 JUDGE WOLFSON: So we are going to have that
21 on January 23rd. I've devoted the day to it and that
22 at the end of that presentation we will hold our
23 status conference and see where we are with all that
24 has occurred over the next -- it will be almost
25 two months at that point.

1 And that I have then set as well for our next
2 status conference to follow that, the 22nd of February
3 at 10:00 a.m., and the science day will begin at 9:30
4 a.m..

5 The issue was raised as to the E-discovery
6 protocol order and protective order that had already
7 been used and filed in the Chakalos case which is the
8 New Jersey case that is pending here and accomplished
9 by Judge Goodman and whether that could be used in
10 this MDL.

11 I think the defendants have indicated it is
12 acceptable. The plaintiffs want an opportunity to
13 review it before confirming that that is agreeable to
14 them and I will give you that opportunity.

15 And I've directed that as soon as reasonably
16 possible after appointments of counsel are made,
17 et cetera, that you notify the Court as to your
18 position about that.

19 MS. PARFITT: Thank you, your Honor.

20 JUDGE WOLFSON: We will hold conferences on a
21 monthly basis. I've given you the February date to
22 follow the January and then we will set them at that
23 January conference perhaps for the March one so we can
24 be looking ahead.

25 Did I miss anything?

1 MR. PLACITELLA: We were going to meet and
2 confer on the issue of the extremis depositions.

3 JUDGE WOLFSON: Yes. I did forget to mention
4 that. One on the depositions and perhaps a protocol
5 could be reached.

6 I should also mention that during the
7 discussion there was a comment made by Mr. Barnes
8 about his particular case that has come out of Georgia
9 and whether because his client's situation is rather
10 dire at this point a concern about expediting that
11 trial whether a motion could be made to somehow
12 accomplish that and that could entail sending it back
13 once it's ready or whatever to Georgia and I said a
14 motion can certainly be filed.

15 Did that then cover everything?

16 MS. O'DELL: Your Honor, in addition to that,
17 in relation to extremis depositions, your Honor, I
18 think we discussed submitting, after conferring with
19 defense and hopefully reaching agreement, submitting a
20 proposed order for a protocol for extremis depositions
21 for plaintiffs who --

22 JUDGE WOLFSON: You can submit that to Judge
23 Goodman, because if there are issues that arise about
24 it, I consider that a discovery issue that she would
25 be resolving.

1 MS. O'DELL: We'll do that. Thank you, your
2 Honor.

3 JUDGE WOLFSON: So the status conference order
4 that will result once you've agreed to it, or if there
5 are issues, but I think I pretty well put forth what
6 we decided and everyone seems to be in agreement,
7 please submit that to me.

8 And then going forward specific discovery
9 disputes, as I said, you'll present to Judge Goodman
10 and she certainly can tell you about her practices or
11 how she would like those presented.

12 JUDGE GOODMAN: Are we going to have issues
13 with filing under seal? Is there going to be a lot of
14 sealing on this case?

15 If there is, I just want to point you to the
16 revisions to Local Rule 5.3. We have a new mechanism
17 which allows for what I will refer to as an omnibus
18 motion to seal. It comes up a lot in our patent
19 cases. It might not be so much here, but I just want
20 you to be sensitive to that.

21 Any discovery disputes, I expect you to follow
22 the rules and meet and confer. To meet and confer
23 means having an actual phone call with the person you
24 have a dispute with or the group that you have a
25 dispute with and not just emails, not letters.

1 You are perfectly welcome to confirm or paper
2 your dispute with each other. But please don't bring
3 it to me as a disputed issue until you've had a
4 conversation, and please don't raise it with me for
5 the first time when we are meeting, especially if it's
6 an issue that you want a chance to argue law on or
7 that there is any complexity to.

8 Be prepared for our conferences, and so I
9 would like something in advance if you have something
10 that you need for me to decide.

11 I accept emails. I like emails. Don't fax to
12 me. For some reason our fax number gets turned off
13 periodically by GSA and they don't tell us when. So
14 emails are good. Faxes are bad.

15 I think that's about it.

16 JUDGE WOLFSON: One last thing, because I have
17 such able law clerks reminding me, the deadline for
18 filing a master complaint. The indication was 30 to
19 45 days. Why don't we run it 30 days from the
20 appointment of new counsel.

21 MS. PARFITT: Yes, your Honor.

22 JUDGE WOLFSON: When will the defendants
23 respond once the complaint is filed?

24 MS. SHARKO: Filing a master answer or
25 commenting on the master complaint?

1 JUDGE WOLFSON: Filing an answer or moving as
2 to the master complaint.

3 MS. SHARKO: 30 days?

4 THE COURT: Okay. That is fine. Include that
5 in the order, please.

6 And short form complaints?

7 MS. O'DELL: Your Honor, we'll submit a short
8 form complaint. We'll attempt to submit a short form
9 complaint along with the master complaint.

10 MS. SHARKO: My suggestion is, we meet and
11 confirm a short form complaint to make sure that the
12 information that we believe we need is in there.

13 JUDGE WOLFSON: I think I already addressed
14 that. I said that you would confer as to what the
15 short form complaint has to include. That's already
16 encompassed in that.

17 I think that covers everything. I'm going to
18 let you go for the day. I think we did a fair amount
19 today. All of you have good holidays.

20 Hopefully, we won't get too many issues
21 between now and January 23rd. But I will want to
22 decide most principally so we can get going the issues
23 of plaintiffs' counsel.

24 Thank you.

25 (Proceedings concluded.)

C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

S/Vincent Russoniello
Vincent Russoniello, CCR
Certificate No. 675

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